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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/406,381	09/27/1999	PRASAD Y. CHEBROLU	062891.0299	1545

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EXAMINER

ENG, DAVID Y

ART UNIT	PAPER NUMBER
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2155

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DATE MAILED: 03/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/406,381

Applicant(s)

CHEBROLU, PRASAD Y.

Examiner

DAVID Y. ENG

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(1) Claims 10 and 28 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Thaweethai.

See at least Figure 5, column 16-20 and 65-68 in Thaweethai.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(2) Claims 1, 3-9, 12-19, 21-27 and 30-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaweethai (USP 5,546,379).

With respect to claims 1, and 19, see at least Figure 5, column 16-20 and 65-68. Thaweethai discloses an access apparatus and method comprising:

a plurality of modems;

a memory operable to store a performance attribute for each modem;

an allocation module coupled to the memory and operable to receive a modem request and to select a modem for service according to the modem's performance attribute; and

a telecommunications interface coupled to the allocations module and operable to couple a remote modem to the selected modem.

The only difference is that Thaweethai does not characterize the apparatus as a server. It is the position of the Examiner that label of an apparatus is not a patentable

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subject matter. Further, since Thaweethai meets all the limitations set forth in the claim combination, it is qualified to label it as an access server.

With respect to claims 3-5, 12-14, 21-23 and 30-32, see claim 7 in Thaweethai.

With respect to claims 6-9, 15-18, 24-27 and 33-36, the types of attributes being monitored and the type of modems used is a matter of design choice.

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Claims 2, 11, 20 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaweethai (USP 5,546,379) in view of Bush (USP 5,828,583).

Thaweethai teaches claim combination set forth above. Updating performance attributes of an apparatus being monitored is well known in the art. Bush teaches updating of performance attributes of a disk drive being monitored. See lines 17-24 and lines 40-51 of column 38 and claims 17 and 21 in Bush. From the teaching of Bush, it would have been obvious to a person of ordinary skill in the art to update the performance attributes of Thaweethai such that the stored attributes reflect the latest data.

Applicant's arguments with respect to claims 1-36 have been considered but are moot in view of the new ground(s) of rejection.



DAVID Y. ENG
PRIMARY EXAMINER